Preserve

"Preserved"

App. F IX-4

Previous References (1927. me)

File No. 152-27

Serial Nos. 3211

Later References
Vol. 152-27 (1415)

General and Revenue Secretariat.

Serial Nos.

Part B for 1928

SUBJECT

Bye laws framed by the municipal Council. Bangalore under Section 68(1)(b) of the municipal Regulation

11 To, The municipal Commissioner, Bangalore municipal Council, through the President
No-L 661 dt 19 4 1928
Returning the Bye-laws with a Copy of the opinion furnished by the Legal Remembrancer.

28/7/28

General and Revenue Secretariat. | Ml. File No. 152 of 1927

Serial No.

Letter No.B3. 965/27-28 dated, the 26th March 1928, from the Municipal Commissioner, Mangalore City through the President, forwarding for approval draft bye-laws framed under Section 48 (1) (b) of the - - Municipal Regulation.

/ The rules and byelaws now sent up by the - - Municipal Council are intended for

(1) regulating, taxing and inspecting the conduct of bakeries, Sweetmeat shops, hotels, restaurants, tea and Coffee houses, ice and aerated water manufacturing places.

(2) levy of taxes on Theatres, Circusses and Cinemas.

2 Section 48 of the Mad Regn enables Municipal Councils only to frame and issue bye-laws and not rules. They may also prescribe conditions to licenses where they can issue licenses. So the word "Rules" has to be omitted. The matters in regard to which Rules can be framed are indicated in Section 46 of the Regulation and the matters now sent are not to be found in that - - Section.

Vide Art. Clause (5) 7/4/28

3 Under Hotels "Eating Houses" are brought in. But under Section 139 which is the enabling Section under which license may be issued, the conditions as to license are not applicable to the use of a place as a hotel or eating house for the sale of food served for consumption on the premises. It seems therefore that no license can be prescribed for this purpose.

Though

Note—Contn. Sheet.

General and Revenue Secretariat. | Bnl File No. 152 of 1927.

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2.

4 Though the amending Regulation IV of 1926 in Sub Clauses IV and VII of sec 48(1)(b), provided for the licensing of private places for the several purposes specified therein, yet no enabling provision has been added to Section 139 in these respects. This is said to be a defect and on this score, a clause is added in the new Amending Bill so as to provide for this. Enactment of Bye-laws in these matters so as to require taking out licenses therefor may perhaps have to await the passing of the Bill into Law. (Vide clause 74 of the Amendment Bill.)

Cls perhaps

5 Next as to Rules for the levy of taxes on Theatres, Circusses and Cinemas.

5 These are purported to be framed under Sub Clause VII of Section 48 (1) (b) and Section 70.

6. Under Sub Clause VII, the Municipal Councils may prescribe conditions when issuing licenses for the use of a private place, "for any other purpose" for which the taking of a license is or may be prescribed".

7 The purposes for which licenses may be issued, must be those for which licensed is or may be prescribed under the Regulation and not by the Municipal Council.

8 Under Clause (pp) bye-laws may be framed among other things for "regulating, in localities intended for residential purposes, the erection or use of buildings for shops, market places, manufacturing places of public resort or for any other purpose".

Note—Contn. Sheet.

WD 6774—GPD—60,000—1926

185 f 827

App F III—2]

General and Revenue Secretariat.

Ml. File No. 152 of 1927

Serial No

3.

9) As places of public resort are mentioned in this, the Municipal Council seem to have taken for granted that they have power to provide for prescribing -- licenses for the use of any place for purposes of -- Drama, Cinema or Circus or any place where show of any kind is arranged for the entertainment of the Public.

10) The Municipal Council may enact bye-laws for regulating the use of places of ~~amusement~~ public resort. This does not enable them to enact for taking out licenses and prescribing fees therefor.

11) The proposed Rules are therefore ultra vires.

CHIEF SECRETARY. 26 MAY 1926

12) Chairman) 21/26/5

13) Do Legal Remembrancer with enclosure for favour of an expression of opinion

Secy 27/5 21.

14) My opinion is noted below

Chairman with enclosure

Secy 1/6/27 L.R. Secy 31/5/27 12/6 27

OFFICE OF THE Council of Ceylon 27 JUN 1926 No. 1254

15) If approved the opinion of the Legal Remembrancer may be Communicated to the Municipal Council in the

CHIEF SECRETARY. 22 JUN 1926

16) Chairman) 20/6

Yes

Secy 5/7 1/7 Secy 26/6 27

Note—Contn. Sheet.

WD 6171—6/25—10,000—30,000

4867A

App I[1] III—2]

General and Revenue Secretariat. File No 152 of 1927

for opinion vide next page

DEWAN'S OFFICE Received on 12 JUL 1928 Reg. No. 382

CHIEF SECRETARY'S 9 JULY 1928

General No.

1) Draft Submitted

2) Chd Secy 7/7

3) Secy 11/7

4) Secy 12-7-28

5) Secy 16/7

6) L661 of 1927 28 The Commissioner Returns the by-laws as a Copy of the Notification by the L & R D

Secy B

NOTE—Contin. sheet

O P I N I O N

The Bangalore City Municipality have submitted for sanction of Government two sets of draft rules and bye-laws, one of them is to regulate, tax and inspect the conduct of bakeries, sweet meat shops, hotels, restaurants, tea and coffee houses, ice and aerated water manufacturing places and the other is to levy tax on theatres, circusses and Cinemas

The rules in both the cases are expressly said to be framed under section 70 of the Municipal Regulation In the case of bakeries hotels, eating houses &c , the rules propose to levy a tax at rates mentioned therein on the annual rental actually paid or payable for such places In the case of theatres, a tax called the theatre tax is proposed to be collected on each occasion before a performance begins

The bye-laws in the case of Hotels &c framed under Section 48 Cl (1) (b) iv and provides for the inspection and regulation of the conduct of business so as to secure cleanliness therein or to minimise any injurious offensive or dangerous effect arising or likely to arise therefrom The bye-laws in respect of theatres are framed under Section 48 Cl (1) b (vii) and impose the obligation of paying the theatre tax before beginning a performance They also prohibit a performance to continue later than 2 A M The bye-laws do not prescribe any granting of licenses or any conditions on or subject to which licenses may be granted or refused

Now section 70 cl(1) which is the only

relevant portion required for the disposal of this case, enacts thus --

"When any license is granted by the Municipal Council under this regulation or when permission is given by them for making any temporary erection or for putting up any projection, or for the temporary occupation of any public street, or other land vested in the Municipal Council, the Municipal Council may charge a fee for such license or permission "

Section 70 is quite inapplicable to this case, because it does not empower the Municipality to frame rules thereunder but only gives them the power to charge license fees It is Section 46 (1) that gives the power to frame rules prescribing the fees to be charged for licenses or permissions granted under Section 70 Even if the rules now framed are construed to be so framed under Section 46, since the bye-laws do not prescribe the taking ~~xfxxx~~ out of a license or permission for Hotels &c , no fee can be charged under Section 70.

Moreover the rules as framed do not in fact charge any license fee under Section 70 but they intend only to impose a tax Taxes on Hotels &c , may perhaps come under Section 59(xi), but the rates fixed do not conform to the provisions there laid down since they may exceed in certain cases the rates specified in Schedul III A of the Regulation Taxes on Dramatic Companies &c , can come only under Section 59 (xiii) and since no sanction of Government is taken, before selection of the tax as required by that clause, the rules

no under 54(x) can set it (xi)

71

now framed are illegal and ultra vires

It is also significant that the procedure prescribed for imposing taxes has not been strictly followed in this case The notice given by the Municipality is clearly not in the form given in Schedule IV which is the form prescribed under Section 60(b)

It is a clear principle of law that the Statutory requirements must be strictly complied with before any tax could be said to be legally imposed (Municipality of the City of Poona v Mohanlal 9 Bombay 51) As observed by Mr Justice Holloway in Leman v Damodaraya (1 Mad 162) "there is no provision for taxing at all otherwise than by the prescribing of the machinery " and the machinery prescribed must be strictly applied before the tax could be said to be legally imposed

may be omitted
No copy to be
to Hulty
Secy
11/7

I may also add that I sent for the Municipal Advocate and asked him how he is going to support the action of the Municipality He conceded that there are irregularities in the procedure followed by the Municipality.

Under these circumstances, I am of opinion that the draft rules and bye-laws now sent by the Bangalore City Municipality cannot be sanctioned by Government

Legal Remembrancer
16 6 25

No P 7163 D 11 6/28

Public Offices,
Bangalore
11th June 1928

To,
The N Balakrishna Esq
Municipal Advocate
Bangalore City

Dear Sir,
The Bangalore City Municipality have sent certain rules & by-laws to regulate Hotels, Cinemas &c, for sanction of Government - I wish to discuss this question with you & request you will kindly make it convenient to see me either any day this week - Yours Sincerely

Legal Asst to Secy

Balepet Bangalore City

Dated 12th June 28

From,

N Balakrishnaiya, B A , LL B ,

Municipal Advocate

Bangalore City

To

B Nagappa Esq Bar-at-Law,

Legal Remembrancer General and Revenue -

Secretariat BANGALORE

Dear Sir

In response to your letter D O No P 7163/ Law dated 11th June 1928 I beg to state that I will go over - to your Office at 12-30 P M on Friday the 15th instant

Yours faithfully

N Balakrishnaiya

MUNICIPAL ADVOCATE

4867
28-3-28

No B3-965/27-28
Encl Seven

CITY MUNICIPAL OFFICE
Bangalore City Dated 26th March 1928 (10)

From

T GOVINDA ROW Esq
MUNICIPAL COMMISSIONER, CITY MUNCIPALITY
BANGALORE CITY

mc 152-27-3

To

M. Madhava Rao, Esq., B A, B L,
Chief Secretary to the Government of
His Highness the Maharaja of Mysore,
Bangalore

Sir,

I have the honor to state that the question of the imposition of license fees on Coffee hotels, messing hotels, soda-water factories, Cinemas, Dramatic performances, Circusses etc in Bangalore City and bringing them under rigorous Municipal control has long been under the consideration of the Council. Certain draft Bye-laws were framed in this behalf by the Bye-Law Committee in August 1925, but as the Municipal Regulation as it stood then, did not empower the passing of these bye-laws further action had to be deferred till the Regulation was amended

2 Section 48 of the Municipal Regulation VII of 1906, as amended by Regulation IV of 1926 now gives power to the City Municipal Councils to frame bye-laws in these cases (Vide Section 48, Clause (1) (b) iv and vii and (pp),) and in conformity with this provision the draft bye-laws made in 1925 were approved by the Council at the meeting held on the 25th March 1927. The draft bye-laws were published in the Mysore Gazette dated 11th August 1927 and objections or suggestions were invited from the public as required by the rules

3. On the 13th September 1927, an objection petition dated 9-9-1927 signed by about 50 hotel keepers in the City was received by registered post praying, that the question may be postponed for better time This whole question was again considered

11

considered by the Council at the meeting held on the 10th ~~January~~ 1927 ~~1926~~ and the Council confirmed their previous resolution dated March 1927 sanctioning the levy of license fees at the rates specified therein

4 Copies of the draft bye-laws, together with the copies of the resolutions of the Bye-Law Committee dated 12th August 1925 and of the Municipal Council dated 12th September 1925 and 25th March 1927 and the objection petition are submitted to Government for early sanction, with a copy of the notice dated 26th July 1927

I have the honour to be,

S i r,

Your most obedient servant,

Municipal Commissioner

Forwarded with compliments,

President

A. P. F. VI Gl.

SUBJECT.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the 192

Date of issue..... 19.7.1928

Signed by .....

List of enclosures.....

Copied by .....

Examined by .....

Section Pol

File No. 152-27

Serial No. 11

No. L661

Price Rules & Bye laws;
1 Copy

To

The ... Port Canning Municipality
through the President
Port Canning

Sir,

I am directed to
with reference to the
notice ~~to be issued to the~~
drafts Rules and Bye-laws
framed by the Port Canning
~~to~~ for regulating, taxing
and superintending the Conduct
of Soda factories, Bakeries
and also Rules for the
levy of taxes in Municipal
areas ~~etc~~ forwarded
with your letter No B-965
dt 26.3.28 I am directed to forward herewith
~~with~~ a copy

over

of the Spring Principal
Leg of Rascals on each side the
Tail, and to support them
Claw of the Goat

(Pyka 14)

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. L661 / me 182 27-11

Dated Bangalore 19 7 1928 8

From

N MADHAVA RAO Esq B A B L

Chief Secretary to the Government of His Highness the Maharaja of Mysore

To

C.Machia, Esq., B.A.,

Municipal Commissioner, Bangalore City.

(Through the President, City Municipal Council, Bangalore)

With reference to the draft rules and bye-laws framed by the Municipal Council for regulating, taxing and inspecting the conduct of soda water factories, Bakeries etc, and also rules for the levy of taxes on Theatres, circusses etc, forwarded with your letter No B.3-965/27-28 dated 26th March 1928, I am directed to forward herewith a copy of the opinion furnished by the Legal Remembrancer in the matter and to state that in the circumstances referred to therein, the rules cannot be sanctioned. They are returned herewith.

I have the honour to be,

Sir,

Your most obedient servant,

For Chief Secretary to Government.

mk.S.